

***Superseded 5/12/2015***

**49-22-401 Contributions -- Rates.**

- (1) Up to the amount allowed by federal law, the participating employer shall make a nonelective contribution of 10% of the participant's compensation to a defined contribution plan.
- (2)
  - (a) The participating employer shall contribute the 10% nonelective contribution described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code which:
    - (i) is sponsored by the board; and
    - (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
  - (b) The member may make voluntary deferrals to:
    - (i) the qualified 401(k) plan which receives the employer contribution described in this Subsection (2); or
    - (ii) at the member's option, another defined contribution plan established by the participating employer.
  - (c) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.
- (3)
  - (a) Except as provided under Subsection (3)(c), the total amount contributed by the participating employer under Subsection (2)(a) vests to the member upon accruing four years employment as a regular full-time employee under this title.
  - (b) The total amount contributed by the member under Subsection (2)(b) vests to the member's benefit immediately and is nonforfeitable.
  - (c) Upon filing a written request for exemption with the office, the following employees are exempt from the vesting requirements of Subsection (3)(a):
    - (i) an executive department head of the state;
    - (ii) a member of the State Tax Commission;
    - (iii) a member of the Public Service Commission;
    - (iv) an employee of the Governor's Office of Management and Budget;
    - (v) an employee of the Governor's Office of Economic Development;
    - (vi) an employee of the Commission on Criminal and Juvenile Justice;
    - (vii) an employee of the Governor's Office;
    - (viii) an employee of the State Auditor's Office;
    - (ix) an employee of the State Treasurer's Office;
    - (x) a person appointed as a city manager or appointed as a city administrator or another at-will employee of a municipality, county, or other political subdivision;
    - (xi) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members; and
    - (xii) an employee of the Utah Science Technology and Research Initiative created under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.
- (d)
  - (i) A participating employer shall prepare a list designating those positions eligible for exemption under Subsection (3)(c).
  - (ii) An employee may not be exempted unless the employee is employed in a position designated by the participating employer under Subsection (3)(c).

- (e)
  - (i) All employer contributions made on behalf of an employee shall be invested in accordance with Subsection 49-22-303(3)(a) until the one-year election period under Subsection 49-22-201(2)(c) is expired if the employee:
    - (A) elects to be exempt in accordance with Subsection (3)(c); and
    - (B) continues employment with the participating employer through the one-year election period under Subsection 49-22-201(2)(c).
  - (ii) An employee is entitled to receive a distribution of the employer contributions made on behalf of the employee and all associated investment gains and losses if the employee:
    - (A) elects to be exempt in accordance with Subsection (3)(c); and
    - (B) terminates employment prior to the one-year election period under Subsection 49-22-201(2)(c).
- (f)
  - (i) In accordance with this section, a municipality, county, or political subdivision may not exempt more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision, whichever is less.
  - (ii) A municipality, county, or political subdivision may exempt at least one regular full-time employee.
- (g) Each participating employer shall:
  - (i) file each employee exemption annually with the office; and
  - (ii) update an employee exemption in the event of any change.
- (h)
  - (i) The office shall make rules to implement this Subsection (3).
  - (ii) The rules made under Subsection (3)(h)(i) shall include provisions to allow the exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or after July 1, 2011, on behalf of an exempted employee who began the employment before May 8, 2012.
- (4)
  - (a) Contributions made by a participating employer under Subsection (2)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (3)(a).
  - (b) A member may direct the investment of contributions including associated investment gains and losses made by a participating employer under Subsection (2)(a) only after the contributions have vested in accordance with Subsection (3)(a).
  - (c) A member may direct the investment of contributions made by the member under Subsection (3)(b).
- (5) No loans shall be available from contributions made by a participating employer under Subsection (2)(a).
- (6) No hardship distributions shall be available from contributions made by a participating employer under Subsection (2)(a).
- (7)
  - (a) Except as provided in Subsection (7)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a), all contributions made by a participating employer on behalf of the member including associated investment gains and losses under Subsection (2)(a) are subject to forfeiture.
  - (b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a) subsequently enters employment with the same

or another participating employer within 10 years of the termination date of the previous employment:

- (i) all contributions made by the previous participating employer on behalf of the member including associated investment gains and losses shall be reinstated upon the member's employment as a regular full-time employee; and
  - (ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (3)(a).
  - (c) The office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs or employer contributions made under this section.
- (8) The office may request from any other qualified 401(k) plan under Subsection (2) any relevant information pertaining to the maintenance of its tax qualification under the Internal Revenue Code.
- (9) The office may take any action which in its judgment is necessary to maintain the tax-qualified status of its 401(k) defined contribution plan under federal law.